

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

Official Minutes March 7, 2003

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**MINUTES OF REGULARLY SCHEDULED HIGHWAYS AND
TRANSPORTATION COMMISSION MEETING HELD IN
JEFFERSON CITY, MISSOURI, ON FRIDAY, MARCH 7, 2003**

A regularly scheduled meeting of the Missouri Highways and Transportation Commission held on Friday, March 7, 2003, in Jefferson City, Missouri, was called to order at 9:30 a.m. by the Chairman, Mr. Ollie W. Gates. The following members were present: Mr. W. L. (Barry) Orscheln, Vice Chairman, Ms. Marjorie B. Schramm, Mr. Bill McKenna, Mr. James B. Anderson, and Mr. Duane S. Michie.

The meeting had been called pursuant to Section 226.120 of the 2000 Revised Statutes of Missouri, as amended. The Secretary verified that notice of the meeting was posted in keeping with Section 610.020 of the 2000 Revised Statutes of Missouri, as amended.

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Mr. Henry Hungerbeeler, Director of the Missouri Department of Transportation; Mr. Rich Tiemeyer, Chief Counsel for the Commission; and Mrs. Mari Ann Winters, Secretary to the Commission, were present on Friday, March 7, 2003.

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*"Department" or "MoDOT" herein refers to Missouri Department of Transportation.
"Commission" or "MHTC" herein refers to Missouri Highways and Transportation Commission.*

CLOSED MEETING

The agenda of the closed meeting was posted in keeping with Sections 610.020 and 610.022, RSMo., including the following statutory citations allowing the meeting to be closed:

1. Section 610.021(11), (12) – Specifications for competitive bidding, sealed bids, or negotiated contracts.
2. Section 610.021(1) – Legal actions and attorney-client privileged communications.
3. Section 610.021(3), (13) – Personnel administration regarding particular employees.

The Commission met in the Closed Meeting from 8:30 a.m. until 9:30 a.m.

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APPROVAL OF MINUTES, REGULARLY SCHEDULED HIGHWAYS AND TRANSPORTATION COMMISSION MEETING, FEBRUARY 7, 2003

Upon motion duly made and seconded, the Commission unanimously approved the minutes of its February 7, 2003, regularly scheduled meeting. The Chairman and Secretary to the Commission were authorized and directed to sign and certify said minutes and to file same in the office of the Secretary.

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CONSENT AGENDA

In order to make the most efficient use of Commission meeting time and to ensure the Commission members are well informed on issues requiring their action, the staff prepares and submits to the Commission members, in advance of their meeting, internal memoranda consisting of advice, opinions, and recommendations related to the items on the Commission

meeting agenda. Those items considered by the staff to be of a routine or noncontroversial nature are placed on a consent agenda. During the meeting, items can be removed from the consent agenda at the request of any one Commission member. The items that are not removed from the consent agenda are approved with a single motion and unanimous vote by a quorum of the members.

Minutes reflecting approval of items on the consent agenda are singly reported herein and intermingled with minutes reflecting action on related subjects that were openly discussed. Reference to "consent agenda" is made in each minute approved via the process described in the paragraph above. Minutes reflecting action on items removed from the consent agenda and openly discussed reflect the open discussion and vote thereon.

No items were removed from the consent agenda. Upon motion by Commissioner Orscheln, seconded by Commissioner Michie, the consent agenda items were unanimously approved by a quorum of Commission members present. Commissioner Orscheln abstained from voting on the Moberly Airport Project portion of the Amendment to the 2002-2006 STIP and 2001 Work Program for Multimodal Operations, as noted on page 14 of these minutes.

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REPORTS OF COMMISSION COMMITTEES AND COMMISSION RELATED BOARDS

The Commission has five committees (Audit Committee, Bond Financing Committee, Building Committee, Compensation Committee, and Legislative Committee) and elects Commission representatives to two boards (Missouri Transportation Finance Corporation and Highway and Transportation Employees' and Highway Patrol Retirement System). The following committee reports were made during the March 7, 2003, meeting.

Audit Committee

Commissioner Anderson reported that the Audit Committee would be meeting with MoDOT's internal auditor prior to the April 4, 2003, Commission meeting to discuss the findings of the auditor pertaining to flights by MoDOT staff and Commission members and review of policies or guidelines related to use of state-owned and chartered aircraft.

Legislative Committee

Commissioner McKenna reported that the Commission continues to make itself available to the members of the legislature. He noted that during the past month he and Commissioner Schramm had visited with various legislators to discuss transportation issues.

Director Hungerbeeler reported that he, Chief Engineer Kevin Keith, and Director of Governmental Affairs Jay Wunderlich spent a week in Washington, D.C., to meet with members of Missouri's Congressional delegation and/or their staffs. He said the Congressional delegation is very interested in doing what it can to help with transportation and to enhance security of Missouri's transportation system. He noted that Senator Kit Bond and other members of the Congressional delegation were very appreciative of the Resolution adopted by the Commission endorsing a \$34 billion federal transportation program in Fiscal Year 2004 increasing annually up to \$45 billion at the end of the six-year act (Fiscal Year 2009).

Commissioner McKenna emphasized that Missouri's greatest opportunity to secure additional funds to build needed transportation improvements is through increased federal funding; therefore, working closely with Missouri's Congressional delegation and others on formulating the new transportation reauthorization act was critical to Missouri. He said that while MoDOT has a dedicated source of revenue for its roads and bridges, it is affected by the severe budget issues facing the state. He noted, therefore, it was very important for MoDOT

staff to (1) provide prompt responses to requests for information from members of the legislature and (2) continue to identify and implement cost-saving measures.

Director Hungerbeeler expressed agreement with Commissioner McKenna and further reported that MoDOT has reduced its administrative cost by approximately \$19 million a year over the past two years. Staff personnel were reduced by 300 people over the past 18 months, resulting in a staff level equal to that in place 11 years ago. He emphasized that MoDOT employees are aware of the restrained budget, and he assured the Commission of their continuous efforts to increase efficiency.

Missouri Transportation Finance Corporation

Commissioner Michie, recently elected President of the Missouri Transportation Finance Corporation Board of Directors, reported that the Corporation had met via conference call on March 4, 2003. During the meeting the Corporation amended the bylaws to reduce the at-large members from three to two and elected Dr. Thomas Johnson, Director of Community Policy Analysis Center at the University of Missouri-Columbia, to fill the expired term of Dr. Stuart Greenbaum. The bylaw changes and appointment of Dr. Johnson will be formally presented to the Commission for concurrence at its April 4, 2003, meeting.

The Board of Directors also approved the Corporation's administrative budget and a loan in the amount of \$24,256,000 to the Commission for the beginning of the Route 63 acquisition and construction project. This project represents a public/private partnership effort.

Highway Employees and Highway Patrol Retirement System

Commissioner McKenna reported that the Highway Employees and Highway Patrol Retirement System Investment Committee had met on March 6, 2003, to hear presentations from the actuary and the system's consultant on asset and liability studies. He said most, if not all,

retirement systems are tied to the market; therefore, no retirement system is performing well in the market at this time.

The full board will meet on March 20, 2003.

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CHAIRMAN'S COMMENTS REGARDING PROPOSED LEGISLATIVE ISSUES PERTAINING TO THE COMMISSION AND MODOT MANAGEMENT

At the conclusion of the Commission's meeting, Chairman Gates noted there were many bills being considered by the legislature that purport to improve MoDOT's accountability. Mr. Gates said that while a positive response cannot be given to each request made of the Commission and MoDOT, the Commission and MoDOT do act in the best interest of the state as a whole.

Chairman Gates voiced objection to proposed Constitutional or statutory changes that would charge the Governor with the responsibility of appointing the administrative head of MoDOT and change the oversight and policy-making responsibilities of the Commission to an advisory body.

Chairman Gates also voiced objection to the creation of a state Inspector General position whose powers would be limited to only transportation issues.

Chairman Gates recalled that a Commission to oversee the Department of Transportation was put in place nearly 75 years ago to insulate decisions related to transportation improvements from political influence. He emphasized the control inherent in a six-member body would result in significantly more accountability to Missouri citizens than could be obtained by the legislative proposals under consideration. He acknowledged that Missouri elected officials and citizens

deserve the assurance that the Commission and MoDOT are using their tax dollars responsibly, and he felt that significant oversight was in place to provide that assurance.

Chairman Gates expressed concern with any proposal that would eliminate the charge of the Commission as set forth in the Constitution. He noted that dedicated funding for highways and bridges is guaranteed in the Constitution, and he feared that changes regarding the Commission could negatively impact the dedication of highway user fees for highway and bridge purposes. He said the Commission had served Missourians well, and he expressed his support of its current governing structure.

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COMMUNICATION TOOLS

The Commissioners referred to positive and negative perceptions pertaining to some of MoDOT's communication tools.

Commissioner McKenna noted that occasionally publications, regardless of high quality, may be perceived negatively by the public as they consider transportation needs. He asked the staff to review its publications from this vantage point.

Commissioner Anderson referred to his previous stated concern regarding the use of the MoDOT website as a communications tool rather than an information source and asked the staff to provide an update of progress being made in this area.

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INTERSTATE ROUTE 70, PUBLIC/PRIVATE PARTNERSHIPS

Commissioner Michie referred to his request made at the February 7, 2003, meeting regarding the scope of the I-70 reconstruction project currently being considered, and asked that the staff meet with him to discuss the issue further. He restated his concern that the scope of the

project being considered would raise false expectations among Missouri citizens when, in fact, such a facility is not financially feasible. Commissioner Michie also expressed concern about the scope of other major projects; he suggested that major projects be reviewed to determine if reducing the scope to address current needs would allow some projects to proceed sooner than would have otherwise been possible.

Chief Engineer Kevin Keith and other staff members will meet with Commissioner Michie to discuss these issues in more detail.

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FEDERAL LEGISLATION, TRANSPORTATION REAUTHORIZATION ACT

Director of Governmental Affairs Jay Wunderlich reported on the staff's efforts to work with members of Missouri's Congressional delegation with a view toward maximizing federal transportation funding available to Missouri. Mr. Wunderlich stated that the transportation act currently in place (TEA-21) is a six-year act, which will expire on September 30, 2003. He reminded the Commission that the MoDOT staff recommended policy positions and specific projects to be considered by the Congressional delegation were presented at the Commission's January 10, 2003, meeting. This information was subsequently delivered to Missouri's Congressional delegation.

Mr. Wunderlich said a threefold, united message was being delivered by all states: (1) grow the program; (2) retain the TEA-21 policy direction; and (3) pass a multi-year bill in 2003.

Commissioner Anderson advised the Commission that in his capacity as president of the Springfield Area Chamber of Commerce, he had led a group of Springfield/Branson leaders to Washington, D.C., to promote regional transportation improvements. He noted that Mr. Wunderlich had accompanied them on their visits with Missouri's congressional leaders and

their staff members. He said those with whom they met were very complimentary of the MoDOT staff, particularly Jay Wunderlich, for MoDOT's presence in Washington, D.C., responsiveness to inquiries, and the relationship that has been built. He and Director Hungerbeeler commended Mr. Wunderlich and other staff members for their efforts.

Commissioner Anderson reported that economic stimulus appears to be an overall theme for the federal program, and he felt that successful efforts to maintain or increase federal funding have to be tied to that theme. Commissioner Anderson further advised that Congress would be seeking to eliminate current prohibitions on using tolls to reconstruct the interstate system.

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FEDERAL TRANSPORTATION REAUTHORIZATION CONSULTANT SERVICES

In keeping with the Commission's recognition that the next federal transportation reauthorization act, anticipated to be effective October 1, 2003, is of critical importance to funding for transportation improvements in Missouri, Jay Wunderlich, Director of Governmental Affairs, recommended that Greenberg Traurig, L.L.P., be retained by the Commission to provide professional and specialized services related to federal transportation programs, projects, legislation and regulations, including the need for timely information regarding such concerns and their impact upon Missouri's transportation program. He reported that Greenberg Traurig is located in Washington, D.C., is highly regarded, has extensive experience in working with members of Congress on legislative issues, and is well-known to members of Congress and well received by members of all political parties. The cost for this service is \$10,000 per month plus limited expenses, which is comparable to the fee charged by the Washington, D.C., consultant retained by the Commission several years ago. The term of the agreement will extend from

March 8, 2003, through December 31, 2003, unless terminated by the Commission, and may be extended for six additional months at the option of the Commission.

After discussion, the Commission approved the recommendation and authorized the Chief Engineer to execute the negotiated agreement and to serve as the Commission's authorized representative for the purpose of administering the agreement provisions. This action was taken during the Commission's closed session in keeping with Section 610.021(12), RSMo 2000, as amended.

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STATE LEGISLATION

Jay Wunderlich, Director of Governmental Affairs, reviewed state legislative proposals that would impact Missouri's transportation program. These included transportation development districts, the employees' health care program, control of tall structures at general aviation airports, reorganization of the Commission and MoDOT management, and creation of an Inspector General's position for MoDOT oversight. Mr. Wunderlich noted that the General Assembly has also been considering budget issues.

Pat Goff, Chief Operating Officer, reported that the budget filed by the staff incorporated over \$20 million of permanent cuts in MoDOT's cost structure. He said MoDOT had experienced \$19 million of cost cuts in 2002 that would continue in 2003 and future years as a permanent reduction. The amount saved is allocated to transportation construction projects. In addition, MoDOT reduced its administrative and expense and equipment budgets by an additional \$2 million for Fiscal Year 2004. He discussed various budget proposals being considered by the legislative committees; however, the legislative budget process has not been completed.

Mr. Goff noted that consideration is being given in the legislature to performance-based budgeting, which had been implemented by MoDOT over two years ago. In keeping with that process, performance measures have been defined and will be available for Commission consideration at its April 4, 2003, meeting.

Commissioner Anderson referred to legislative consideration being given to transportation districts. He speculated that as the Commission has further statewide challenges to provide resources necessary to meet transportation needs and demands, there would be a statewide proliferation of transportation districts and increased pressure for enabling legislation to establish transportation districts. He said local areas would attempt to meet demands by leveraging local resources with state resources. He said while such efforts result in local and regional projects being accelerated, they ultimately would have a negative affect on the ability to get approval of statewide resources for a statewide system.

In response to an inquiry from Chairman Gates, Jan Skouby, Administrator of Railroads and Waterways, reported that a Request for Proposal has been solicited for rail passenger service. She explained the process for evaluating the RFPs.

Commissioner Schramm advised the Commission that representatives of the city of Kirkwood had commended Ms. Skouby for her efforts regarding rail service in their city. She expressed appreciation for Ms. Skouby's efforts.

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FUNDING OVERVIEW

In response to a request from the Commission, Mike Golden, Chief Financial Officer; Herbert Wheeler, Resource Management Director; and Jim Deresinski, Controller, provided an

overview of MoDOT revenues and expenditures and a proposed format for analyzing and monitoring the budget.

The staff clarified for Commissioner Michie that currently costs of preliminary engineering on projects that may never be built are expenditures from construction funds. Mr. Goff said this issue might warrant a change in the future to expense costs for projects that never go to fruition. Mr. Keith explained that contractor payments represents approximately 75 percent of the funds allocated to “construction.” The remainder is used for engineering, right-of-way acquisition, or other costs to bring about a completed project.

Mr. Hungerbeeler clarified that the “Business Plan Priority” item was put in place because the budget deadline preceded preparation of MoDOT’s strategic and business plans. As funds are expended from the “Business Plan Priority” category, the expense is allocated to the relevant category, i.e. maintenance, administration, general services, etc.

Commissioner Anderson felt the proposed format for analyzing and monitoring the budget provided the type of detail needed by the Commission, however, he asked that consideration be given to further consolidation and simplification. Commissioner Anderson further requested that a one page executive summary be added to the front of the financial statement to explain, in three to five bullet points, the items from an executive overview standpoint that the staff feels the Commission should focus on in terms of variance or deviation from the budget or expected results.

The Commission concurred with Mr. Deresinski that future budget reports would be made on a quarterly basis.

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**AMENDMENT TO 2002-2006 STATEWIDE TRANSPORTATION
IMPROVEMENT PROGRAM AND 2001 WORK PROGRAM FOR
MULTIMODAL OPERATIONS**

On behalf of the Director, Brian Weiler, Multimodal Operations Director, recommended approval to transfer six airport improvement projects from state to federal funding participation due to a decline in revenues to the Aviation Trust Fund. These projects were approved as part of Multimodal Operations Fiscal Year 2001 Work Program and the Department's 2002-2006 Statewide Transportation Improvement Program as follows:

<u>City</u>	<u>Federal/State Amount</u>	<u>Total Amount</u>	<u>Project Description</u>
Lebanon	\$1,098,000	\$1,220,000	Construct parallel taxiway extension and connecting taxiways to runway 18/36; construct turnaround pad for runway 9; improve safety area; install perimeter fence.
Mexico	1,080,000	1,200,000	Construct parallel and connecting taxiways; expand apron.
Moberly	1,260,000	1,400,000	Resurface runway 13/31; seal runway 5/23 and taxiways; construct turnarounds; reconstruct apron; replace airfield lighting; improve drainage.
Sedalia	1,350,000	1,500,000	Extend runway 18/36 and parallel taxiway; replace lighting; land for RPZ.
Sikeston	585,000	650,000	Resurface runway.
Washington	<u>900,000</u>	<u>1,000,000</u>	Land for airport expansion (new runway).
Totals	\$6,273,000	\$6,970,000	

Via approval of the consent agenda, the Commission approved the recommendation. Commissioner Orscheln abstained from voting on the Moberly Airport Project.

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**CONSULTANT CONTRACT EXTENSION,
NAVIGANT CONSULTING, INC.**

On behalf of the Director, C. L. Baldwin, State Construction and Materials Engineer, recommended approval of a contract extension with Navigant Consulting, Inc., to conduct contract schedule reviews for the Creve Coeur Lake Bridge project (Job No. J7U0803E) in St. Louis County, and review subsequent contractor claims, if any. The original contract amount of \$140,000, plus \$61,770 for costs anticipated by the contract extension, will bring the total contract amount to \$201,770; however estimated costs for contractor claims review will be expended on an as needed basis.

Via approval of the consent agenda, the Commission unanimously approved the recommendation.

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**SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING,
ROUTE 100, ST. LOUIS COUNTY**

On behalf of the Director, Ed Hassinger, District 6 Engineer, reminded the Commission that on April 7, 2000, the Commission authorized staff to retain consultants on an hourly rate, “as needed” basis to perform certain engineering services in an amount not to exceed \$100,000 for a single work order. In accordance with this direction, a work order was entered into with Horner & Shifrin, Inc., to prepare plans for widening Route 100 at Old State Road, St. Louis County, and replacing the existing signals (Job No. J6S1577). Due to a new commercial development being proposed at the southeast corner of the intersection improvement, MoDOT has an opportunity to save approximately \$90,000 on construction and right-of-way acquisition costs. Therefore, Mr. Hassinger recommended approval of a supplemental work order with

Horner & Shifrin, Inc., in the amount of \$14,501, for additional surveying and plan revisions.

The requested amount combined with the original work order will total \$114,485.

Via approval of the consent agenda, the Commission unanimously approved the recommendation and authorized the Director, Chief Engineer, Chief Operating Officer, or District Engineer to execute the supplemental work order.

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AWARD OF CONTRACTS ON FEDERAL-AID AND STATE PROJECTS, BID OPENING OF FEBRUARY 21, 2003

On behalf of the Director, Diane Heckemeyer, State Design Engineer, stated that bids for road and bridge improvement projects had been received on February 21, 2003.

Ms. Heckemeyer presented a tabulation of the bids received on all projects and recommended awards be made to the lowest responsive and responsible bidder noted below.

<u>Route County Project</u>	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
Call 101 169 Buchanan J1P0842	\$803,851.68	\$12,516.12	Herzog Contracting Corp. St. Joseph, MO
Call 102 K Andrew J1S0557	3,534,165.26	755.80	United Contractors, Inc. Johnston, IA
Call 103 116 Clinton J1P0576	823,024.47	409.94	The St. Joseph Fuel Oil & Manufacturing Co. St. Joseph, MO
Call 104 6 Buchanan J1P0821	626,480.92	120.04	The St. Joseph Fuel Oil & Manufacturing Co. St. Joseph, MO

Route County Project	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
Call 201 63 Schuyler J2P0464	5,033,120.52	1,954.24	Norris Asphalt Paving Co. Ottumwa, IA
Call 301 CC Monroe J3S0480	324,355.57	107.92	Bleigh Construction Company Hannibal, MO
Call 302 Y Pike J3S0652	648,215.38	27.17	Bleigh Construction Company Hannibal, MO
Call 303 Y Pike J3S0500	780,060.81	719.65	Bleigh Construction Company Hannibal, MO
Call 304 36 Marion J3P0413D	11,006,910.22	377.90	Chester Bross Const. Co./ C.B. Equipment, Inc. Hannibal, MO
Call 401 1 Clay J4S1554	407,991.29		Superior Bowen Asphalt Company, L.L.C. Kansas City, MO
Call 402 635 Platte J4I1557 69 Platte J4P1555 45 Platte J4P1556 9 Platte J4S1541	1,023,757.35	2,648.60	Micro-Surfacing, Inc. St. Louis, MO

Route County Project	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
Call 403 35 Clay J4I1511	4,186,827.87	377.90	APAC-Kansas, Inc., Reno Division Overland Park, Kansas
Call 404 435 Jackson J4I1558	544,040.33		Keith Contracting, L.L.C. Jefferson City, MO
Call 405 291 Jackson J4P1421	4,623,934.68	716.20	D.F. Freeman Contractors, Inc. Shawnee, KS
Call 406 35 and 29 Clay J4M0110	81,425.34		Star Creek Land Improvement, L.L.C. Boonville, MO
Call 407 210 Clay J4M0123	14,573.21		T. L. Enterprises Walker, MO
Call 501 52 Miller J5P0484	2,970,913.71	1,384.34	APAC-Missouri, Inc. Columbia, MO
Call 601 255 St. Louis J6I1486 255 St. Louis J6I1486B	21,541,446.00	377.90	James Cape & Sons Company Racine, WI
Call 602 F St. Charles J6S1029	1,407,641.15	477.58	Magruder Construction Co., Inc. Eolia, MO

<u>Route County Project Call 606</u>	<u>Bid Amount Plus 3% for Contingencies</u>	<u>Non- Contractual Costs</u>	<u>Contractor</u>
W St. Louis/Jefferson J6S1516	2,908,921.88	377.90	Goodwin Bros. Construction Company Crystal City, MO
Call 701 71B Jasper/Newton J7U0683	2,199,088.55	2,295.36	APAC-Missouri, Inc. Columbia, MO
Call X01 67 Wayne J0P0867	614,612.87	755.80	Chester Bross Const. Co./ C.B. Equipment, Inc, Hannibal, MO
Totals	<u>\$66,105,359.06</u>	<u>\$26,400.26</u>	

Construction speed limits conform to the standard work zone speed limits shown on Standard Drawing No. 616.10 as approved by the Commission.

After consideration and upon motion by Commissioner Schramm, seconded by Commissioner Michie, the Commission unanimously awarded the projects to the lowest responsive and responsible bidder, as recommended and noted above, and authorized an additional three percent of the contract amount for contingencies. The Commission also approved the allocation of funds covering the non-contractual costs included in the various projects, as indicated, and authorized execution of the necessary contracts by the Director, Chief Engineer, or Chief Operating Officer. Commissioner Orscheln abstained from voting on Call No. 501.

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AUTHORITY TO REJECT BIDS

On behalf of the Director, Diane Heckemeyer, State Design Engineer, advised the Commission that bids were received February 21, 2003 on the following projects. She recommended all bids on Call Nos. 604 and 605 be rejected because they were considered excessive.

<u>Route</u>	<u>County</u>	<u>Project</u>
Call 604		
Various	Various	J6P1632
Call 605		
D	St. Charles	J6S1502

The Commission, by unanimous vote of all members present, rejected the bids received on the above-mentioned projects.

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ROADWAY LOCATION AND/OR DESIGN APPROVAL

On behalf of the Director, District Engineers informed the Commission that preliminary plans and exhibits for the following projects had been made available to the public.

Route 19, Montgomery and Gasconade Counties
Hermann Bridge (Missouri River)
Job No. J3P0584B
Public Hearing Held November 27, 2001

This proposed improvement will replace the existing Route 19 bridge over the Missouri River. Traffic will be handled over the existing structures and roadbed until the new structures are to be connected to the new alignment. Construction will be staged to place traffic on the completed portions of the new and existing construction until the remaining portions are completed and the old structures can be removed. This project is 0.7 mile in length.

Mr. Kirk Juranas, District 3 Engineer, recommended approval of the proposed improvement as presented at the public hearing.

**Route 7, Jackson County
Intersection of Colbern Road
Job No. J4P1479**

Public Hearing Held January 27, 2003

This proposed improvement will modify the intersection to increase capacity and improve safety by replacing the existing span wire signals with a roundabout. Traffic will be maintained on existing Route 7 through staged construction. Colbern Road, east of the intersection, will be closed for up to a month and west of the intersection will be closed for a weekend. This project is 0.4 mile in length.

Mr. Sabin Yanez, District 4 Engineer, recommended approval of the location and design of the proposed improvement to the intersection as presented at the public hearing.

**Route F, Christian County
1.5 Miles West of Route 65
Job No. J8S0615
No Hearing Held**

This proposed improvement will replace existing deficient bridge Y-753 over Elk Creek. Route F traffic will be handled over the existing route and temporary bypasses during construction. This project is 1.0 mile in length.

Mr. Dale Ricks, District 8 Engineer, recommended approval of the location and design of the proposed improvement.

After full consideration of the favorable and adverse economic, social and environmental effects of the recommended locations and designs, the Commission, via approval of the consent agenda, unanimously found and determined the recommended locations and designs would best serve the interest of the public and approved the recommendations.

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**ADMINISTRATIVE RULE,
7 CSR 10-10, CONTRACTOR PERFORMANCE RATING
TO DETERMINE RESPONSIBILITY**

On behalf of the Director, C. L. Baldwin, State Construction and Materials Engineer, advised that authorization was granted by the Commission on November 1, 2002, to file amended rulemaking for 7 CSR 10-10.010 and 7 CSR 10-10.030 through 7 CSR 10-10.090, Contractor Performance Rating to Determine Responsibility rules. This rulemaking revises and clarifies the process for evaluating the performance of contractors.

Mr. Baldwin recommended the Commission adopt the final orders of rulemaking and authorize the Secretary to the Commission to file the orders of rulemaking with the Joint Committee on Administrative Rules and the Office of the Secretary of State. He also recommended the Director, Chief Engineer, or Chief Operating Officer be authorized to execute any document appropriate to finalize this rulemaking process.

Via approval of the consent agenda, the Commission unanimously approved the recommendations.

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**RATIFICATION OF APPROVAL OF RIGHT OF WAY PLANS FOR
CONDEMNATION**

On behalf of the Director, Diane Heckemeyer, State Design Engineer, recommended the Commission ratify approval by the Chief Engineer of the following right of way plans, which have been filed for condemnation.

<u>County</u>	<u>Route</u>	<u>Job Number</u>	<u>Date Commission Approved Design</u>
St. Charles	40	J6P0672D	March 6, 1997 (3 rd Amended)
St. Louis	180	J6U0806	October 6, 1989 (3 rd Amended)

In accordance with Section 227.050 RSMo, the Commission, via approval of the consent agenda, approved the right-of-way plans for the above noted projects and directed they be filed as necessary for the condemnation of right-of-way.

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-- REPORTS --

EQUAL OPPORTUNITY UNIT – QUARTERLY REPORT

Brenda Treadwell-Martin, Equal Opportunity Director, provided a quarterly report for October through December 2002 on initiatives aimed at achieving and maintaining a diverse workforce.

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- ADMINISTRATIVE HEARINGS -

**IN THE MATTER OF REQUEST FOR
ADMINISTRATIVE REVIEW OF NOTICE
TO TERMINATE NONCONFORMING OUTDOOR ADVERTISING,
HEARING NO. 01-01-414,
HARDEE'S, APPLICANT,
ADMINISTRATIVE HEARING NO. 720**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Terminate Nonconforming Outdoor Advertising issued under 7 CSR 10-6.060(3) by the Missouri Department of Transportation (hereinafter, Department) to Hardee's (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on October 16, 2002. The Department was represented by Megan Waters-Hamblin, Assistant Counsel. The Applicant was represented by G. Edwin Proctor, Attorney at Law. The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 9-18; Exhibits D-L) owned and maintained by Applicant adjacent to Route I-35 in Clinton County at County log mile 17.1985 (T. 7-8, 19; Exhibit A).

The sign is visible from the main traveled way of Route I-35 which is a part of the interstate highway system (T. 19-20).

The sign is located in an area which has been zoned for agricultural use by Clinton County, Missouri (T. 18, 21; Exhibit M). The sign is located within any city limits (T. 21).

Sharp's Truck & Tractor, Inc. filed an application for permit to maintain outdoor advertising (existing signs except directional and other official signs) dated January 16, 1980 (T. 18; Exhibit M).

The sign was erected on July 1, 1959 (T. 18; Exhibit M).

The Department issued a permit for this sign on June 30, 1972 (T. 18).

A biennial permit for the sign is designated a nonconforming permit (T. 18-19; Exhibit N). The sign became nonconforming on June 30, 1972 (T. 18-19).

On July 27, 1994, the sign had three weathered, brown round supporting poles (T. 9-11; Exhibit D). Likewise, on June 18, 1996, and May 5, 2000, the sign had three weathered, brown round supporting poles (T. 11-13; Exhibits E-G).

The Department's outdoor advertising permit specialist observed the sign once a month (T. 6, 13). In the summer of 2001, the outdoor advertising permit specialist noticed that the sign was about to fall over (T. 14).

On November 21, 2001, the sign had four new square vertical poles with concrete on the ground and up the bottom of the poles (T. 14-16; Exhibits H-J). Three poles were replaced and one pole was added (T. 29-30).

On October 2, 2002, the sign had four new square vertical poles and bracing was added (T. 16-18; Exhibits K-L).

The sign required some repair (T. 32-33). On several occasions, the sign was repaired (T. 33). After May 5, 2000, on each occasion of repair, less than fifty percent of the poles or vertical supports were replaced or worked on (T. 33-36; Applicant's Exhibit 1).

After May 5, 2000, the sign was a deteriorated or damaged nonconforming sign (T. 14-18, 29-30, 32-33; Exhibits H-L).

After May 5, 2000, the sign was in need of or required replacement of fifty percent (50%) or more of the poles or vertical supports (T. 14-18, 29-30, 32-33; Exhibits H-L).

The Department issued a Notice to Terminate Nonconforming Outdoor Advertising for the sign which was received by the Applicant (T. 7-8; Exhibits A-B).

CONCLUSIONS OF LAW

The Commission has jurisdiction under 7 CSR 10-6.060(3), 23 CFR 750.707(d) and Section 226.150 RSMo.

A sign which is lawfully erected but which does not conform to the requirements of state statutes enacted at a later date or which fails to comply with state statutes due to changed conditions is a nonconforming sign. See 7 CSR 10-6.015(24). Such a sign may be repaired and maintained by the sign owner subject to the limitations of the Commission's administrative rules regarding maintenance of nonconforming signs.

We conclude the sign was a lawful nonconforming sign on May 5, 2000 but that after the summer of 2001, the sign was a deteriorated or damaged nonconforming sign which was repaired in violation of 7 CSR 10-6.060(3)(D)1.

Applicant's position appears to be that the sign was not repaired in violation of 7 CSR 10-6.060(3)(D)1 because on each occasion of repair work, less than fifty percent of the poles or vertical supports were actually repaired. 7 CSR 10-6.060(3)(D)1 does not mention the number of times for any repair work. The witness of the Applicant acknowledged that the sign needed repair. The Department's witnesses indicated that the sign in the summer of 2001 was about to fall over. The fact finding function rests with the Commission. Forbes v. Missouri Real Estate Commission, 798 S.W.2d, 227, 229 (Mo. App. 1990). As the fact finder, we can draw all reasonable inferences from the evidence presented and can base our ultimate findings upon such

reasonable inference. School District of Springfield R-12 v. Transamerica Insurance Company, 633 S.W.2d 238, 249 (Mo. App. 1982).

The reasonable inference is that the sign was in need of major repair. This inference can also be drawn from the repair work. All three original poles were replaced with one new pole added. Further, we can infer from the photos of November 15, 2001 and October 2, 2002 that the only repair work performed after November 15, 2001 was the addition of bracing. The bracing is not considered to be vertical support, because vertical is defined as perpendicular to the plane of the horizon according to Webster's New Collegiate Dictionary, 2d edition, p. 48. Clearly the repair of the sign by adding bracing is not considered for determining compliance with 7 CSR 10-6.060(3)(D)1.

Also, the multiple occasions of repair cannot infer any evidence that less than fifty percent (50%) of the poles or vertical supports of the sign needed or required repair. Another inference could be that the required repair needed more than one day to complete. As a result, Applicant's position is without merit.

The Department properly issued the Notice to Terminate Nonconforming Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

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**IN THE MATTER OF REQUEST FOR
ADMINISTRATIVE REVIEW OF NOTICE
TO REMOVE OUTDOOR ADVERTISING,
HEARING NO. 02-03-156,
THF MARION COUNTY DEVELOPMENT, L.L.C., APPLICANT,
ADMINISTRATIVE HEARING NO. 719**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Remove Outdoor Advertising issued under Section 226.580 RSMo. by the Missouri Department of Transportation (hereinafter, Department) to THF Marion County Development, L.L.C. (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on June 12, 2002. The Department was represented by Robert M. Hibbs, Senior Assistant Counsel. The Applicant was represented by Mark L. Brown, Attorney at Law. The Applicant submitted a brief.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 7-10, 30-32, 35-36; Exhibits C-E, 1-2, 4) owned and maintained by Applicant adjacent to Route 61 in Marion County at County log mile 22.34 (T. 6-8; Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route 61 which is a part of the primary highway system (T. 13).

The sign was erected after January 2002 (T. 13-14).

The sign is located in an area which has been zoned for commercial use by Hannibal, Missouri (T. 15).

The sign is being maintained without a permit issued by the Department (T. 15, 55).

On June 4, 2002, the northbound face of the sign contained four displays stacked one above the other (T. 8-9, 10, 14-15; Exhibits D-E). The displays advertised Riverbend Plaza, Wal-Mart Supercenter, THF and Commerce Bank (T. 8-10; Exhibits D-E).

On May 21, 2002, the southbound face of the sign contained five displays stacked one above the other (T. 7-8, 14-15; Exhibit C). The displays advertise Riverbend Plaza, Wal-Mart Supercenter, Fashion Bug, THF and Commerce Bank (T. 7-8; Exhibit C).

The sign is located at the south corner of the Commerce Bank property very near Stardust Drive (T. 8, 16-18, 52-53; Exhibits D, K, 3). Applicant and Commerce Bank, N.A. on February 14, 2002, entered into a sign easement agreement for the sign (T. 53-55; Exhibit L). The distance from the sign to the Wal-Mart is 1690 feet (T. 19, 39). The Wal-Mart is not visible from Route 61 because other businesses in the Huck Finn Shopping Center obstruct the view (T. 33). THF Properties, Fashion Bug and Wal-Mart are all located in Riverbend Plaza (T. 11-13, 15-20; Exhibits H-K). There is an intervening land use between Riverbend Plaza and the sign on the Commerce Bank property (T. 8-13, 15-20, 33, 39, 52-55; Exhibits D-H, K; Exhibit 3). The sign is not an on-premise sign (T. 8-13, 15-20, 33, 39, 52-55; Exhibits D-H, K, 3).

The Department issued a Notice to Remove Outdoor Advertising for the sign which was received by the Applicant (T. 6-7; Exhibits A-B).

CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of a primary highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administrative rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional

and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

Signs erected or maintained on or after March 30, 1972, within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way of any interstate or primary highway, and located in areas zoned commercial, industrial or the like under local zoning authority are subject to the sizing, lighting, spacing, and permit requirements of Sections 226.540 and 226.550 RSMo.

Section 226.580.1(2) RSMo. and 7 CSR 10-6.080(2)(B) prohibit signs for which a permit is not obtained as prescribed in Sections 226.500 to 226.600 RSMo. We conclude the sign violates that prohibition and, thus is subject to removal as an unlawful sign. Drury Development Corp. v. State Highway Commission, 637 SW 2d 354 (Mo. App. 1982); Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 677 SW 2d 389 (Mo. App. 1984).

Section 226.540(2)(c) RSMo. prohibits after August 28, 1999, the erection of sign structures in which two or more displays are stacked one above the other. We conclude the sign violates that prohibition, and, thus is subject to removal as an unlawful sign.

In its brief, Applicant argues that the sign is a well-maintained directional sign in area with high concentration of tourist-oriented businesses. Applicant relies upon Section 226.520(5) RSMo. 2000 as prohibiting the removal of the sign. Applicant's position is without merit. It is clear that Missouri courts have previously decided that the "tourist-oriented business" exception in Section 226.520(5) is invalid because it exceeds the scope allowed by federal regulation.

Martin Oil Company v. Missouri Highway and Transportation Commission, 2 SW 3d 144, 149 (Mo. App. S.D. 1999). As a result, Section 226.520(5) RSMo. 2000 does not prevent the sign's removal due to the sign's violation of the permit and stacking requirements.

The Department properly issued the Notice to Remove Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

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**IN THE MATTER OF REQUEST FOR
ADMINISTRATIVE REVIEW OF NOTICE
TO REMOVE OUTDOOR ADVERTISING,
HEARING NO. 00-02-163,
PRODENTAL, APPLICANT,
ADMINISTRATIVE HEARING NO. 682**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Remove Outdoor Advertising issued under Section 226.580 RSMo. by the Missouri Department of Transportation (hereinafter, Department) to ProDental (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on December 6, 2000. The Department was represented by Robert M. Hibbs, Senior Assistant Counsel. The Applicant was represented by William Y. Frick, Attorney at Law. At the hearing, Applicant filed a trial brief. The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 8; Exhibit C-D) owned and maintained by Applicant adjacent to Route 63 in Adair County approximately 0.27 mile south of Route KK on the west side of the highway (T. 7; Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route 63 which is a part of the primary highway system (T. 8-9).

Adair County is an unzoned county (T. 9). The sign is not located within any city limits (T. 10).

The sign is being maintained without a permit issued by the Department (T. 10, 32-33, 37, 47).

The sign structure consists of a fuel tank with ProDental advertising on it (T. 8, 26; Exhibits C-D). The City of Kirksville, Missouri owns the land where the fuel tank is located (T. 36).

ProDental is a business name which is owned by Dr. Arnold Steven Barber for his practice as a dentist in Kirksville and Columbia (T. 34, 45).

The sign is located near the Kirksville regional airport which is owned by the City of Kirksville (T. 10). The airport terminal building is visible from Route 63 (T. 38). The end of the runway for the airport is within 200 yards (600 feet) of the highway right-of-way (T. 40). The city leases hangers to private aircraft owners and operators (T. 44). At the airport, the city has flight instruction, fuel sales, products and supplies for flight training, plane rental, plane charters, aircraft maintenance and aircraft painting (T. 43-44). Between 1971 and 1980, Dr. Barber

operated a commuter airline out of the airport (T. 34-35). The fuel tank has been at this location since 1972 or 1973 (T. 35). The airport is not commercial or industrial activity (T. 11-12). The sign is not located within 600 feet of a commercial activity (T. 9, 14).

Advertising appeared on the fuel tank in 1973 (T. 36). However, there were intervals where there was no advertising on the fuel tank (T. 36, 47). No advertising appeared on the fuel tank between 1988 and 1999 (T. 27-28). The sign was erected after March 30, 1972 (T. 27-28, 36, 47).

The Department issued a Notice to Remove Outdoor Advertising for the sign which was received by the Applicant (T. 5, 7; Exhibits A-B).

CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of-way, and visible from the main traveled way of a primary highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administration rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

We conclude the sign violates the location restrictions of Sections 226.520(4) and 226.540(4), (5) RSMo. and, thus, is subject to removal as an unlawful sign.

In its brief, Applicant claims that the Kirksville airport qualifies as unzoned commercial land. Section 226.520(4) RSMo. 2000 contains an exception to the general prohibition on signs within 660 feet of highway right-of-way. The exception permits outdoor advertising located in unzoned commercial areas. The burden is on Applicant to prove that the sign came within the exception. Superior Outdoor Advertising Co. v. State Highway Commission of Missouri, 641 S.W. 2d 480, 484 (Mo. App. S.D. 1982); State ex rel. Whiteco Metrocom v. State Highway and Transportation Commission, 689 S.W. 2d 366-367 (Mo. App. W.D. 1985); Overland Outdoor Advertising Company, Inc. v. State ex rel. Missouri Highway and Transportation Commission, 877 S.W. 2d 158, 160 (Mo. App. E.D. 1994); Williamsburg Truck Plaza v. Muri, 882 S.W. 2d 346, 348 (Mo. App. W.D. 1994).

According to Section 226.540(5) RSMo. 2000, “commercial or industrial activities” means those which are generally recognized as commercial or industrial by zoning authorities. Applicant did not present any evidence whether zoning authorities generally recognized airports as commercial. Further, “commercial” is used in the narrow sense for the billboard statutes. Independent Stave Co., Inc. v. Missouri Highway and Transportation Commission, 702 S.W. 2d 931 (Mo. App. S.D. 1985); Osage Outdoor Advertising, Inc. v. State Highway Commission of Missouri, 699 S.W. 2d 791 (Mo. App. W.D. 1985)

Also, airports owned by cities generally are immune from the ordinances of local zoning authorities. City of Washington v. Warren County, 899 S.W. 2d 863 (Mo. banc 1995); City of Bridgeton v. City of St. Louis, 18 S.W. 2d 107 (Mo. App. E.D. 2000) In fact, the acquisition and control of a municipal airport is a public purpose. Dysart v. City of St. Louis, 11 S.W. 2d 1045 (Mo. banc 1928); Section 305.190 RSMo. 2000 As a result, we conclude that airports owned by

governmental entities are not commercial activities under the billboard law. Thus, Applicant has failed to meet its burden.

The Department properly issued the Notice to Remove Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

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**IN THE MATTER OF REQUEST FOR
ADMINISTRATIVE REVIEW OF NOTICE
TO REMOVE OUTDOOR ADVERTISING,
HEARING NO. 00-03-144,
606 WHOLESALE FURNITURE, APPLICANT,
ADMINISTRATIVE HEARING NO. 685**

This is the final decision and order of the Missouri Highways and Transportation Commission following a request for administrative review of a Notice to Remove Outdoor Advertising issued under Section 226.580 RSMo. by the Missouri Department of Transportation (hereinafter, Department) to 606 Wholesale Furniture (hereinafter, Applicant).

A hearing was conducted by Hearing Examiner Dan Pritchard in the Hearing Room of the State Highway and Transportation Building, Jefferson City, Missouri, on March 14, 2001. The Department was represented by Bryce Gamblin, Assistant Counsel. The Applicant was represented by Lee R. Elliott, Attorney at Law. The Applicant submitted a brief. The case was submitted on the record.

Having considered all the competent and substantial evidence upon the whole record, we find as follows:

FINDINGS OF FACT

This hearing involves an outdoor advertising structure (T. 12-13, 15-16, 22-24; Commission's Exhibits F-H, P) owned and maintained by Applicant adjacent to Route 61 in Pike County at County log mile 21.256 (T. 8-9, 31-32; Commission's Exhibit A).

The sign is visible from the main traveled way and is located within 660 feet of the right-of-way of Route 61 which is a part of the primary highway system (T. 26).

The sign was erected in 2000 (T. 78).

The sign is located within 500 feet of a permitted existing sign on the same side of the highway (T. 15-16, 22-23, 32-33; Commission's Exhibit G, H, P).

The sign is being maintained without a permit issued by the Department (T. 33, 42, 79).

The sign consists of a trailer with advertising painted on it (T. 12-13; Commission's Exhibit F). The sign advertises "606 Wholesale Furniture, 1st Bowling Green Exit, Bus. 61 N 2 Miles" (T. 12-13; Commission's Exhibit F). The business advertised on the sign is five miles from the property where the sign is located (T. 91).

The trailer has a license from the License Bureau (T. 83).

The sign is located within an unincorporated city and the area is not zoned (T. 33, 73).

The Department issued a Notice to Remove Outdoor Advertising for the sign which was received by the Applicant (T. 8-11; Commission's Exhibit A, D).

Applicant requested an administrative hearing (T. 11; Commission's Exhibit E).

CONCLUSIONS OF LAW

The Commission has jurisdiction under Section 226.580 RSMo. The sign is adjacent to and within 660 feet of the nearest edge of the right-of-way, and visible from the main traveled

way of a primary highway and, thus, subject to the requirements of Sections 226.500 to 226.600 RSMo. and the Commission's administrative rules regarding outdoor advertising.

Signs erected or maintained after March 30, 1972, within 660 feet of the nearest edge of the right-of-way of a primary or interstate highway are regulated and limited to (1) directional and other official signs and notices; (2) on-premise signs; (3) signs located in areas zoned commercial, industrial, or the like; (4) signs located within 750 feet of an unzoned commercial or industrial establishment when located in a county without zoning regulations; and (5) nonconforming signs. Sections 226.520, 226.540, 226.550 RSMo. and 7 CSR 10-6.060(2).

Section 226.540(3)(b)a RSMo. prohibits signs adjacent to primary highways outside incorporated municipalities from being erected within 500 feet of an existing sign on the same side of the highway. We conclude the sign violates that prohibition and, thus, is subject to removal as an unlawful sign under Section 226.580.1(1) RSMo. 2000.

Section 226.580.1(2) RSMo. and 7 CSR 10-6.080(2)(B) prohibit signs for which a permit is not obtained as prescribed in Sections 226.500 to 226.600 RSMo. We conclude the sign violates that prohibition and, thus is subject to removal as an unlawful sign. Drury Development Corp. v. State Highway Commission, 637 SW 2d 354 (Mo. App. 1982); Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 677 SW 2d 389 (Mo. App. 1984).

Section 226.580.1(5) RSMo. 2000 considers unlawful and subject to removal signs which are not securely affixed to a substantial structure. We conclude that the sign does not violate that provision of the statute.

Applicant's brief states that the trailer is not a billboard. In taking this position, Applicant ignores State ex rel. Missouri Highway and Transportation Commission v. Marcum

Oil Co., 697 SW 2d 580 (Mo. App. 1985) which concerned a sign on a trailer. Further, the Court in Piros Signs, Inc. v. Missouri Highway and Transportation Commission, 708 SW 2d 709, 711 (Mo. App. 1986) rejected the idea that the placing of signs on existing structures exempts the sign. Applicant's position is without merit.

Applicant also suggests that Section 301.330 RSMo. 2000 requires information on the trailer. Section 301.330 RSMo. required certain information on each commercial motor vehicle. Section 301.010(7) RSMo. 2000 defines "commercial motor vehicle" as a motor vehicle designed or regularly used for carrying freight and merchandise. "Motor vehicle" is defined as any self-propelled vehicle not operated exclusively upon tracks. Section 301.010.1 (33) RSMo. 2000. There is no evidence that the trailer is a self-propelled vehicle. As a result, Section 301.330 RSMo. 2000 is not applicable to the trailer which is the subject sign. Thus, Applicant's position is without merit.

Applicant's brief also cites Article I, Section 8 of the Missouri Constitution. In BBC Fireworks, Inc. v. State Highway and Transportation Commission, 828 SW 2d 879 (Mo. banc 1992), the Missouri Supreme Court rejected the position that a portion of the Billboard Laws (226.520) violated Article I, Section 8. Further, in the same case, the Court noted earlier decisions which upheld billboard regulations and which rejected federal and state free speech challenges. Id. at pp. 882-883. Thus, Applicant's position is without merit.

Applicant's brief further claims a taking of Applicant's property right for public purposes. The evidence clearly establishes that sign violates the Billboard Law. Applicant has no basis to complain about a taking due to the violation. Osage Outdoor Advertising, Inc. v. Missouri Highway and Transportation Commission, 680 SW 2d 162 (Mo. App. 1984); Garnett

Outdoor Company of Kansas City v. Missouri Highway and Transportation Commission, 691

SW 2d 915 (Mo. banc 1985). Thus, Applicant's position is without merit.

The Department properly issued the Notice to Remove Outdoor Advertising.

ORDER

It is, therefore, the order of the Commission that Applicant cause the sign to be removed within 30 days of the date of this order.

This report and order was adopted by unanimous vote of all Commission members present.

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By unanimous vote of all members present, the meeting of the Commission was adjourned.

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